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QUESTION OF RESPONSIBILITY FOR ATTACKS ON UNITED NATIONS AND AND ASSOCIATED PERSONNEL AND MEASURES TO ENSURE THAT THOSE RESPONSIBLE FOR SUCH ATTACKS ARE BROUGHT TO JUSTICE

Report of the Working Group

Chairman: Mr. Philippe Kirsch (Canada)

I. INTRODUCTION

1. In paragraph 5 of resolution 48/37, entitled "Question of responsibility for attacks on United Nations and associated personnel and measures to ensure that those responsible for such attacks are brought to justice", the General Assembly recommended that, at its forty-ninth session, the Working Group that was established at the forty-eighth session under the item be re-established in the framework of the Sixth Committee in the event that further work was required for the elaboration of an international convention dealing with the safety and security of United Nations and associated personnel, with particular reference to responsibility for attacks on such personnel.

2. In accordance with that recommendation, the Sixth Committee, at its 3rd meeting on 26 September 1994, re-established the Working Group and appointed Mr. Philippe Kirsch (Canada) as its Chairman.

3. The Working Group elected Ms. Silvia A. Fernández de Gurmendi (Argentina) and Mr. Volodymyr D. Khandogy (Ukraine) as Vice-Chairmen.

4. Further to decisions taken at its first session by the Ad Hoc Committee on the Elaboration of an International Convention Dealing with the Safety and Security of United Nations and Associated Personnel, Switzerland and the International Committee of the Red Cross (ICRC) participated as observers in the work of the Working Group. 1/

5. The Working Group held 11 meetings between 3 and 14 October 1994.

6. The Working Group had before it a revised negotiating text worked out by the Ad Hoc Committee at its first and second sessions (28 March-8 April and 1-12 August 1994). 2/

7. In addition to elaborating a draft preamble, the Working Group reviewed article 1-2, articles 3 to 9 and articles 10 to 28 of the "revised negotiating text".

II. REVIEW OF THE REVISED NEGOTIATING TEXT

Draft preamble

8. A first draft for the preamble was presented to the Working Group and underwent a number of substantive, structural and drafting changes. The revised text is reflected in the draft convention annexed hereto.

Article 1-2 (Scope of application and definitions)

9. As a result of the debate in the Working Group, article 1-2, as contained in the revised negotiating text, was divided into two separate articles, namely article 1, entitled "Definitions", consisting of paragraph 2 of article 1-2 of the revised negotiating text, and article 2, entitled "Scope of application", consisting of paragraphs 1 and 3 of that same article 1-2.

10. As regards the provision on definitions, changes that were made in the course of the debate included:

(a) The inclusion of a reference to the International Atomic Energy Agency in subparagraphs (a) (ii), (b) (ii) and (b) (iii);

(b) The replacement in subparagraph (b) of the phrase "directly connected with" by "in support of the fulfilment of the mandate of";

(c) The reformulation of subparagraph (c), which now includes a reference in the chapeau to the Charter of the United Nations as well as to the method of establishment and conduct of the operation, and further contains a simplified version of subparagraph (ii) (see art. 1 of the draft convention annexed hereto);

(d) The inclusion of the words "and their equipment" in subparagraph (e).

11. Paragraph 1 of the provision on the scope of the Convention is identical to paragraph 1 of article 1-2 of the revised negotiating text and paragraph 2 is a revised and abridged version of paragraph 3 of that same article 1-2.

Articles 3 to 9

12. Article 3 (Identification), article 4 (Agreements on the status of the operation), article 5 (Transit) and article 6 (Respect for laws and regulations) have remained unchanged. Article 7 (Right of self-defence) now appears, unaltered, immediately after the article entitled "Saving clauses" (see art. 21

of the draft convention annexed hereto). Article 8 (Duty to ensure the safety and security of United Nations and associated personnel) has remained unchanged (see art. 7 of the draft convention annexed hereto). In article 9 (Duty to release or return personnel captured or detained), the following phrase was added at the beginning of the first sentence "Except as otherwise provided in an applicable status-of-forces agreement ..." (see art. 8 of the draft convention annexed hereto).

Articles 10 to 28

13. In article 10 (Crimes against United Nations personnel), subparagraph 1 (e) has been redrafted and shortened (see art. 9 of the draft convention annexed hereto). Articles 11 (Establishment of jurisdiction), 12 (Prevention of crimes against United Nations and associated personnel), 13 (Communication of information), 14 (Measures to ensure prosecution or extradition), 15 (Prosecution of alleged offenders) and 16 (Extradition of alleged offenders) have remained unchanged (see arts. 10-15 of the draft convention annexed hereto). In article 17 (Mutual assistance in criminal matters), paragraph 1 has been redrafted on the basis of article 11 of the Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, article 10 of the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, and article 13 of the Convention on the Physical Protection of Nuclear Material. The rest of the article has remained unchanged (see art. 16 of the draft convention annexed hereto). In article 18 (Fair treatment for alleged offenders), the title has been simplified and paragraph 1 has been slightly redrafted for the sake of clarity (see art. 17 of the draft convention annexed hereto). Articles 19 (Notification of outcome of proceedings) and 20 (Dissemination) have remained unchanged (see arts. 18 and 19 of the draft convention annexed hereto). In article 21 (Saving clauses), the three saving clauses contained in paragraph 1 and paragraph 2 (a) and (b) have been regrouped under a single chapeau as subparagraphs (a), (b) and (c) and two additional saving clauses, one on the right of States to withdraw the personnel contributed to a United Nations operation and the other on entitlement to appropriate compensation payable in the event of death, disability, injury or illness attributable to peace-keeping service, have been added in subparagraphs (d) and (e) respectively. In the first saving clause, the phrase "universally recognized standards of international human rights" has been replaced by "universally recognized standards of human rights as contained in international instruments" and, in the third saving clause, the phrase "in accordance with" has been substituted for the phrase "in a manner consistent with" (see art. 20 of the draft convention annexed hereto). Article 21 of the draft convention annexed hereto corresponds, as indicated above, to article 7 of the revised negotiating text. Article 22 (Dispute settlement provisions) has remained unchanged, except for a technical adjustment in the second sentence of paragraph 2. A new article on the convening of meetings to review the implementation of the convention has been included (see art. 23 of the draft convention annexed hereto). As for articles 23 to 28 containing the final clauses, they have largely remained unchanged. However, while article 28 of the revised negotiating text, concerning the duties of the depositary, has been eliminated, a new article designating the Secretary-General of the United Nations as the depositary of the

convention has been included (see arts. 24-29 of the draft convention annexed hereto).

14. Purely editorial or technical adjustments have furthermore been introduced in various provisions of the revised negotiating text.

15. During the course of the discussion as well as at the concluding stage of the proceedings, one representative recalled that his country, which had been a major troop-contributor to United Nations peace-keeping operations and had, even now more than 5,000 troops and military observers engaged in such operations in different countries, was naturally concerned about the safety of United Nations peace-keeping personnel. He pointed out that the concern for the safety of United Nations peace-keeping personnel must be harmonized with the Charter principle of respect for political sovereignty of the State and that that should also be reflected in the proposed Convention, which should uphold the consent of the host State to the establishment or the continuation of peace-keeping operations so as to encourage compliance with its provisions. In his opinion, fuller consultations were required to reach agreement on the text of the proposed convention. In that context, he drew attention to the substance of the proposals made by his delegation at the first session of the Ad Hoc Committee held from 28 March to 8 April 1994. 3/ He suggested, as an alternative, that the General Assembly consider the adoption of a declaration, adding that status-of-forces agreements could draw upon elements from such a declaration. He further observed that an important aspect of the question of safety of United Nations peace-keeping personnel was the issue of payment of death and disability benefit on a uniform scale to peace-keeping personnel irrespective of their nationality, in keeping with the principle of equality enshrined in the Charter, and with the practice already followed in case of reimbursement of troop-contributing costs to Member States.

III. RECOMMENDATION OF THE WORKING GROUP

16. At its 11th meeting, on 14 October 1994, the Working Group decided to submit to the Sixth Committee for consideration and with a view to its adoption the text of the draft convention which is annexed hereto.

Notes

1/ Official Records of the General Assembly, Forty-ninth Session, Supplement No. 22 (A/49/22), paras. 9 and 10.

2/ Ibid., para. 28.

3/ Ibid., annex II, sects. A and H.

ANNEX

DRAFT CONVENTION ON THE SAFETY OF UNITED NATIONS AND ASSOCIATED PERSONNEL

The States Parties to this Convention,

Deeply concerned over the growing number of deaths and injuries resulting from deliberate attacks against United Nations and associated personnel,

Bearing in mind that attacks against, or other mistreatment of, personnel who act on behalf of the United Nations are unjustifiable and unacceptable, by whomsoever committed,

Recognizing that United Nations operations are conducted in the common interest of the international community and in accordance with the principles and purposes of the Charter of the United Nations,

Acknowledging the important contribution that United Nations and associated personnel make in respect of United Nations efforts in the fields of preventive diplomacy, peacemaking, peace-keeping, peace-building and humanitarian and other operations,

Conscious of the existing arrangements for ensuring the safety of United Nations and associated personnel, including the steps taken by the principal organs of the United Nations, in this regard,

Recognizing none the less that existing measures of protection for United Nations and associated personnel are inadequate,

Acknowledging that the effectiveness and safety of United Nations operations are enhanced where such operations are conducted with the consent and cooperation of the host State,

Appealing to all States in which United Nations and associated personnel are deployed and to all others on whom such personnel may rely, to provide comprehensive support aimed at facilitating the conduct and fulfilling the mandate of United Nations operations,

Convinced that there is an urgent need to adopt appropriate and effective measures for the prevention of attacks committed against United Nations and associated personnel and for the punishment of those who have committed such attacks,

Have agreed as follows:

Article 1

Definitions

For the purposes of this Convention:

(a) "United Nations personnel" means:

(i) Persons engaged or deployed by the Secretary-General of the United Nations as members of the military, police or civilian components of a United Nations operation;

(ii) Other officials and experts on mission of the United Nations or its specialized agencies or the International Atomic Energy Agency who are present in an official capacity in the area where a United Nations operation is being conducted;

(b) "Associated personnel" means:

(i) Persons assigned by a Government or an intergovernmental organization with the agreement of the competent organ of the United Nations;

(ii) Persons engaged by the Secretary-General of the United Nations or by a specialized agency or by the International Atomic Energy Agency;

(iii) Persons deployed by a humanitarian non-governmental organization or agency under an agreement with the Secretary-General of the United Nations or with a specialized agency or with the International Atomic Energy Agency;

to carry out activities in support of the fulfilment of the mandate of a United Nations operation;

(c) "United Nations operation" means an operation established by the competent organ of the United Nations in accordance with the Charter of the United Nations and conducted under United Nations authority and control:

(i) Where the operation is for the purpose of maintaining or restoring international peace and security; or

(ii) Where the Security Council or the General Assembly has declared, for the purposes of this Convention, that there exists an exceptional risk to the safety of the personnel participating in the operation;

(d) "Host State" means a State in whose territory a United Nations operation is conducted;

(e) "Transit State" means a State, other than the host State, in whose territory United Nations and associated personnel and their equipment are in transit or temporarily present in connection with a United Nations operation.

Article 2

Scope of application

1. This Convention applies in respect of United Nations and associated personnel and United Nations operations, as defined in article 1.

2. This Convention shall not apply to a United Nations operation authorized by the Security Council as an enforcement action under Chapter VII of the Charter of the United Nations in which any of the personnel are engaged as combatants against organized armed forces and to which the law of international armed conflict applies.

Article 3

Identification

1. The military and police components of a United Nations operation and their vehicles, vessels and aircraft shall bear distinctive identification. Other personnel, vehicles, vessels and aircraft involved in the United Nations operation shall be appropriately identified unless otherwise decided by the Secretary-General of the United Nations.

2. All United Nations and associated personnel shall carry appropriate identification documents.

Article 4

Agreements on the status of the operation

The host State and the United Nations shall conclude as soon as possible an agreement on the status of the United Nations operation and all personnel engaged in the operation including, inter alia, provisions on privileges and immunities for military and police components of the operation.

Article 5

Transit

A transit State shall facilitate the unimpeded transit of United Nations and associated personnel and their equipment to and from the host State.

Article 6

Respect for laws and regulations

1. Without prejudice to such privileges and immunities as they may enjoy or to the requirements of their duties, United Nations and associated personnel shall:

(a) Respect the laws and regulations of the host State and the transit State; and

(b) Refrain from any action or activity incompatible with the impartial and international nature of their duties.

2. The Secretary-General of the United Nations shall take all appropriate measures to ensure the observance of these obligations.

Article 7

Duty to ensure the safety and security of United Nations and associated personnel

1. United Nations and associated personnel, their equipment and premises shall not be made the object of attack or of any action that prevents them from discharging their mandate.

2. States Parties shall take all appropriate measures to ensure the safety and security of United Nations and associated personnel. In particular, States Parties shall take all appropriate steps to protect United Nations and associated personnel who are deployed in their territory from the crimes set out in article 9.

3. States Parties shall cooperate with the United Nations and other States Parties, as appropriate, in the implementation of this Convention, particularly in any case where the host State is unable itself to take the required measures.

Article 8

Duty to release or return United Nations and associated personnel captured or detained

Except as otherwise provided in an applicable status-of-forces agreement, if United Nations or associated personnel are captured or detained in the course of the performance of their duties and their identification has been established, they shall not be subjected to interrogation and they shall be promptly released and returned to United Nations or other appropriate authorities. Pending their release such personnel shall be treated in accordance with universally recognized standards of human rights and the principles and spirit of the Geneva Conventions of 1949.

Article 9

Crimes against United Nations and associated personnel

1. The intentional commission of:

(a) A murder, kidnapping or other attack upon the person or liberty of any United Nations or associated personnel;

(b) A violent attack upon the official premises, the private accommodation or the means of transportation of any United Nations or associated personnel likely to endanger his or her person or liberty;

(c) A threat to commit any such attack with the objective of compelling a physical or juridical person to do or to refrain from doing any act;

(d) An attempt to commit any such attack; and

(e) An act constituting participation as an accomplice in any such attack, or in an attempt to commit such attack, or in organizing or ordering others to commit such attack;

shall be made by each State Party a crime under its national law.

2. Each State Party shall make the crimes set out in paragraph 1 punishable by appropriate penalties which shall take into account their grave nature.

Article 10

Establishment of jurisdiction

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the crimes set out in article 9 in the following cases:

(a) When the crime is committed in the territory of that State or on board a ship or aircraft registered in that State;

(b) When the alleged offender is a national of that State.

2. A State Party may also establish its jurisdiction over any such crime when it is committed:

(a) By a stateless person whose habitual residence is in that State; or

(b) With respect to a national of that State; or

(c) In an attempt to compel that State to do or to abstain from doing any act.

3. Any State Party which has established jurisdiction mentioned in paragraph 2 shall notify the Secretary-General of the United Nations. If such State Party

subsequently rescinds that jurisdiction, it shall notify the Secretary-General of the United Nations.

4. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the crimes set out in article 9 in cases where the alleged offender is present in its territory and it does not extradite such person pursuant to article 15 to any of the States Parties which have established their jurisdiction in accordance with paragraph 1 or 2.

5. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

Article 11

Prevention of crimes against United Nations and associated personnel

States Parties shall cooperate in the prevention of the crimes set out in article 9, particularly by:

(a) Taking all practicable measures to prevent preparations in their respective territories for the commission of those crimes within or outside their territories; and

(b) Exchanging information in accordance with their national law and coordinating the taking of administrative and other measures as appropriate to prevent the commission of those crimes.

Article 12

Communication of information

1. Under the conditions provided for in its national law, the State Party in whose territory a crime set out in article 9 has been committed shall, if it has reason to believe that an alleged offender has fled from its territory, communicate to the Secretary-General of the United Nations and, directly or through the Secretary-General, to the State or States concerned all the pertinent facts regarding the crime committed and all available information regarding the identity of the alleged offender.

2. Whenever a crime set out in article 9 has been committed, any State Party which has information concerning the victim and circumstances of the crime shall endeavour to transmit such information, under the conditions provided for in its national law, fully and promptly to the Secretary-General of the United Nations and the State or States concerned.

Article 13

Measures to ensure prosecution or extradition

1. Where the circumstances so warrant, the State Party in whose territory the alleged offender is present shall take the appropriate measures under its national law to ensure that person's presence for the purpose of prosecution or extradition.

2. Measures taken in accordance with paragraph 1 shall be notified, in conformity with national law and without delay, to the Secretary-General of the United Nations and, either directly or through the Secretary-General, to:

(a) The State where the crime was committed;

(b) The State or States of which the alleged offender is a national or, if such person is a stateless person, in whose territory that person has his or her habitual residence;

(c) The State or States of which the victim is a national; and

(d) Other interested States.

Article 14

Prosecution of alleged offenders

The State Party in whose territory the alleged offender is present shall, if it does not extradite that person, submit, without exception whatsoever and without undue delay, the case to its competent authorities for the purpose of prosecution, through proceedings in accordance with the law of that State. Those authorities shall take their decision in the same manner as in the case of an ordinary offence of a grave nature under the law of that State.

Article 15

Extradition of alleged offenders

1. To the extent that the crimes set out in article 9 are not extraditable offences in any extradition treaty existing between States Parties, they shall be deemed to be included as such therein. States Parties undertake to include those crimes as extraditable offences in every extradition treaty to be concluded between them.

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may at its option consider this Convention as the legal basis for extradition in respect of those crimes. Extradition shall be subject to the conditions provided in the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize those crimes as extraditable offences between themselves subject to the conditions provided in the law of the requested State.

4. Each of those crimes shall be treated, for the purposes of extradition between States Parties, as if it had been committed not only in the place in which it occurred but also in the territories of the States Parties which have established their jurisdiction in accordance with paragraph 1 or 2 of article 10.

Article 16

Mutual assistance in criminal matters

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the crimes set out in article 9, including assistance in obtaining evidence at their disposal necessary for the proceedings. The law of the requested State shall apply in all cases.

2. The provisions of paragraph 1 shall not affect obligations concerning mutual assistance embodied in any other treaty.

Article 17

Fair treatment

1. Any person regarding whom investigations or proceedings are being carried out in connection with any of the crimes set out in article 9 shall be guaranteed fair treatment, a fair trial and full protection of his or her rights at all stages of the investigations or proceedings.

2. Any alleged offender shall be entitled:

(a) To communicate without delay with the nearest appropriate representative of the State or States of which such person is a national or which is otherwise entitled to protect that person's rights or, if such person is a stateless person, of the State which, at that person's request, is willing to protect that person's rights; and

(b) To be visited by a representative of that State or those States.

Article 18

Notification of outcome of proceedings

The State Party where an alleged offender is prosecuted shall communicate the final outcome of the proceedings to the Secretary-General of the United Nations, who shall transmit the information to other States Parties.

Article 19

Dissemination

The States Parties undertake to disseminate this Convention as widely as possible and, in particular, to include the study thereof, as well as relevant provisions of international humanitarian law, in their programmes of military instruction.

Article 20

Savings clauses

Nothing in this Convention shall affect:

(a) The applicability of international humanitarian law and universally recognized standards of human rights as contained in international instruments in relation to the protection of United Nations operations and United Nations and associated personnel or the responsibility of such personnel to respect such law and standards;

(b) The rights and obligations of States, consistent with the Charter of the United Nations, regarding the consent to entry of persons into their territories;

(c) The obligation of United Nations and associated personnel to act in accordance with the terms of the mandate of a United Nations operation;

(d) The right of States which voluntarily contribute personnel to a United Nations operation to withdraw their personnel from participation in such operation; or

(e) The entitlement to appropriate compensation payable in the event of death, disability, injury or illness attributable to peace-keeping service by persons voluntarily contributed by States to United Nations operations.

Article 21

Right of self-defence

Nothing in this Convention shall be construed so as to derogate from the right to act in self-defence.

Article 22

Dispute settlement

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by application in conformity with the Statute of the Court.

2. Each State Party may at the time of signature, ratification, acceptance or approval of this Convention or accession thereto declare that it does not consider itself bound by all or part of paragraph 1. The other States Parties shall not be bound by paragraph 1 or the relevant part thereof with respect to any State Party which has made such a reservation.

3. Any State Party which has made a reservation in accordance with paragraph 2 may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 23

Review meetings

At the request of one or more States Parties, and if approved by a majority of States Parties, the Secretary-General of the United Nations shall convene a meeting of the States Parties to review the implementation of the Convention, and any problems encountered with regard to its application.

Article 24

Signature

This Convention shall be open for signature by all States, until _____ 199__ , at United Nations Headquarters in New York.

Article 25

Ratification, acceptance or approval

This Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.

Article 26

Accession

This Convention shall be open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 27

Entry into force

1. This Convention shall enter into force _____ days after _____ instruments of ratification, acceptance, approval or accession have been deposited with the Secretary-General of the United Nations.

2. For each State ratifying, accepting, approving or acceding to the Convention after the deposit of the _____ instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the _____ day after deposit by such State of its instrument of ratification, acceptance, approval or accession.

Article 28

Denunciation

1. A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations.

2. Denunciation shall take effect _____ months following the date on which notification is received by the Secretary-General of the United Nations.

Article 29

Authentic texts

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States.